

REMARKS

Re-examination and favorable reconsideration in light of the above amendments and the following comments.

Claims 40 - 63 are pending in the application. Currently, all claims stand rejected.

By the present amendment, claim 40 has been added to include the subject matter of claim 46; claim 46 has been cancelled; claim 47 has been amended to depend from claim 40; and new claims 64 and 65 have been added to the application.

In the office action mailed February 25, 2004, claims 40, 41, and 43 - 63 were rejected under 35 U.S.C. 103(a) as being unpatentable over New Glarus or Cocks in light of Ashurst in view of U.S. Patent No. 4,355,110 to Line and further in view of Applicants' alleged admissions on page 5; ad claims 40 and 42 were rejected under 35 U.S.C. 103(a) as being unpatentable over "Snakebite" in view of Line and further in view of Applicants' alleged admissions.

The foregoing rejections are traversed by the instant response.

With regard to the rejection of claims 40 and 42, the Examiner has provided no evidence that "Snakebite" contains pectin in the claimed proportion. In fact, the Examiner

has provided no evidence as to the composition of the Snakebite drink that he is relying upon. It is submitted that neither Line nor the alleged admissions cure this defect in the rejection of claims 40 and 42 on obviousness grounds. Thus, claim 40 as amended herein is clearly allowable over the cited and applied references. Claim 42 is allowable for the same reasons as claim 40 as well as on its own accord.

With respect to the rejection of claims 40, 41, and 43 - 63, Applicants remarks in the previous amendment are incorporated herein by reference. Further, the New Glarus and Cocks do not contain the slightest indication, whatsoever, suggesting that the mentioned beers could not be Pils-type beers. Evidently, all the mentioned beers are clear bright Pils-type beers corresponding to the known prior art which teaches adding pectin in the wort for facilitating precipitation and sedimentation of proteins and other matters contained in the wort before strongly filtering said wort in order to eliminate all settled matters for preparing a Pils-type beer. Accordingly, the prior art teaches the combination of a first step of adding pectin for facilitating sedimentation of suspended matters,

with a second step of strongly filtering the wort for eliminating all settled matters.

The Ashurst reference and the Line patent do not cure the defects of New Glarus and Cocks in any respect. As for the alleged admissions, the Examiner fails to recognize that one cannot establish a case of obviousness merely by showing that something is old or known in the art. The law of obviousness requires that there be some sort of suggestion or teaching or some motivation. The Examiner has failed to make the required showing so on this basis alone, the obviousness rejection is defective.

Claims 40, 41, 43 - 63 are allowable because the cited and applied prior art teaches away from the method of claims 40, 50, 56, 62, and 63 which corresponds to the combination of a first step of adding pectin with a second step of centrifuging the wort, which is less strong than a filtering step. As indicated in the description, the pectin addition provokes formation of protein particles of smaller dimension which would be eliminated in a strong filtration but would remain suspended in the wort in case of a centrifuging step, thereby creating the possibility of obtaining the haze of the present invention.

Claims 64 and 65 are believed to be allowable for the same reasons as claims 62 and 63 as well as on their own accord.

The Examiner's response to the arguments on page 3 of the office action is noted. Applicants once again point out that no scientific evidence or reasoning has been supplied by the Examiner which would show that the claimed haze would be obtained as the result of any teaching in the cited and applied references. The cited and applied prior art does not teach the claimed process steps, thus the inherency argument fails. If the Examiner is going to maintain this inherency argument, then he should supply the required scientific evidence or reasoning. Absent this, the rejection should be withdrawn because it is nothing more than an attempted hindsight reconstruction of the claimed invention.

The instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.


Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, he is hereby invited to contact Applicants' attorney at the telephone number listed below.

Appl. No. 09/284,816
Amdt. dated June 16, 2004
Reply to office action of February 25, 2004

A one-month extension of time is enclosed herewith.
Also enclosed is a check in the amount of \$110.00 to cover
the extension of time fee. Should the Commissioner
determine that an additional fee is due, he is hereby
authorized to charge said fee to deposit Account No. 02-
0184.

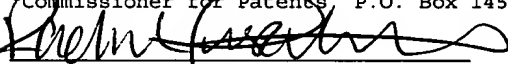
Respectfully submitted,

Philippe Malcorps et al.

By 
Barry L. Kelmachter
Attorney for Applicants
Reg. No. 29,999
Tel: (203) 777-6628
Fax: (203) 865-0297

Date: June 16, 2004

I hereby certify that this correspondence is being deposited with the United States
Postal Service with sufficient postage as first class mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on June 16, 2004.


Rachel Piscitelli